SUPREME COURT, U. S.

FILED

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No. 577

In the

Supreme Court of the United States

OCTOBER TERM, 1967

LAURIL M. ALLIS,

Petitioner,

v.

LOUIS ALLIS, JR. and
WESTERN FARMS, LTD.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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September, 1967

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TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provision Involved	3
Statement	3
Reasons For Granting the Writ:	
1. There are genuine issues as to material facts alleged by Petitioner Lauril M. Allis as the basis for her claim to a community and homestead interest in the Rolling Hills Ranch located in Collin County, Texas	5
2. The holding by the United States Court of Appeals for the Fifth Circuit that Texas Courts would give effect to a Nevada judgment determining that real property located in Collin County, Texas is the separate property of Respondent Louis Allis, Jr. is a decision of an important question of local law in conflict with applicable local decisions	7
3. The Nevada judgment would not be entitled to full faith and credit in the courts of the State of Texas	16

Page

Cases

Calkins v. Calkins, 115 So. 866 14

Carmichael, et al. v. Delta Drilling Co., 243 S.W. 2d 458 11

Carpenter v. Strange, 141 U.S. 87, 35 L. Ed. 640 11

Fall v. Eastin, 215 U.S. 1 (1909) 16

Holt v. Guerguin, 163 S.W. 10 10

McIlreath v. McIlreath, 345 S.W. 2d 722 8

Tilt v. Kelsey, 207 U.S. 43, 52 L. Ed. 95 14

Other

U. S. Constitution, Article IV, Section 1 16

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Petitioner prays that writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on June 7, 1967.

OPINION BELOW

The District Court issued no opinion. The opinion of the Court of Appeals is printed in the Appendix hereto. It is as yet unreported.

JURISDICTION

The statutory provision invoked to sustain the jurisdiction of this Court is Section 1254(1) of Title 28 of the United States Code. The judgment of the Fifth Circuit was entered on June 7, 1967.

QUESTIONS PRESENTED

1. Whether there is a genuine issue as to any material fact alleged by Petitioner Lauril M. Allis as the basis for her claim to a community and homestead interest in the Rolling Hills Ranch.
2. Whether the Nevada judgment purporting to determine title to Texas Realty is void for want of jurisdiction.
3. Whether as a matter of comity the Courts of the State of Texas will give effect to a Nevada judgment determining that the Rolling Hills Ranch located in Collin County, Texas, is the separate property of Respondent Louis Allis, Jr.
4. Whether the Courts of the State of Texas must give full faith and credit to the Nevada judgment determining that real property locate din Collin County, Texas is the separate property of Respondent Louis Allis, Jr.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent part of the section of the United States Constitution which is involved herein is Article IV, Section 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

STATEMENT

This suit was commenced by Petitioner Lauril M. Allis on October 13, 1964 in the 59th Judicial District Court of Collin County, Texas (R. 4-13). On November 6, 1964, a Petition for Removal to the United States District Court for the Eastern District of Texas, Sherman Division was filed in said court and the cause was removed to that Court on grounds of diversity of citizenship (R. 1-4).

Petitioner Lauril M. Allis and Respondent Louis Allis, Jr. were married in the State of Florida on June 1, 1957. (R. 5) Thereafter, about January 1, 1959, they moved to the State of Texas. (R. 5) Subsequently, in May, 1959, Respondent purchased certain real property located in Collin County, Texas, known as the Rolling Hills Ranch (R. 5) and took title to the property in his own name. Some years later, on May 7, 1963, Respondent Louis Allis, Jr. permanently separated himself from Petitioner and moved to Reno, Nevada. (R. 6) On May 10, 1963 he conveyed the Rolling Hills Ranch to Respondent Western Farms, Ltd., a Nevada corporation, the stock of which is owned by Respondent Louis Allis, Jr. (R. 6, 7) On June 25, 1963, Respondent Louis Allis, Jr. filed suit for a divorce from Petitioner Lauril M. Allis. (R. 6) While that suit was pending, in October, 1964, Petitioner filed suit for the purpose of adjudicating her community and homestead rights to the Rolling Hills Ranch. (R. 4-13) Thereafter, on January 15, 1965, the District Court of the

State of Nevada filed findings of fact and conclusion of law which, *inter alia*, granted Petitioner Lauril M. Allis a divorce from Respondent Louis Allis, Jr. and awarded Louis Allis, Jr. all of the stock in Respondent Western Farms, Ltd., which had been issued to him solely in consideration for the transfer to it of the Rolling Hills Ranch. (R. 62, 63, 68) In so holding, the Nevada District Court determined that the Rolling Hills Ranch was the sole and separate property of Respondent Louis Allis, Jr. and not the community property of Petitioner Lauril M. Allis and Respondent Louis Allis, Jr. (R. 62, 63, 68) The court also found that the Rolling Hills Ranch was not the homestead of Petitioner and Respondent at the time they were separated from each other. On October 18, 1965, the United States District Court for the Eastern District of Texas, Sherman Division, granted the motions for summary judgment of Respondents Louis Allis, Jr. and Western Farms, Ltd. on the grounds that (1) there is no genuine issue between the parties as to any material fact; (2) Appellant Lauril M. Allis is estopped to file suit in the State of Texas to place in issue the title to the real property known as the Rolling Hills Ranch; (3) the judgment of the District Court of Nevada armed by the Nevada Supreme Court is *res judicata* of Appellant's claim alleged in the suit filed by her to adjudicate title to the Rolling Hills Ranch and (4) the judgment of the Nevada Court is entitled to full faith and credit in the State of Texas. (R. 146-150)

Petitioner thereafter filed notice of appeal to the United States Court of Appeals for the Fifth Circuit. (R. 151) After the filing of briefs and oral argument, the Court of Appeals affirmed the judgment of the United States District Court on the grounds that (1) Texas courts would not look upon the Nevada decree as void for want of jurisdiction and (2) Texas courts would give effect to the Nevada judgment.

REASONS FOR GRANTING THE WRIT

1. There are genuine issues as to material facts alleged by Petitioner Lauril M. Allis as the basis for her claim to community and homestead interest in the Rolling Hills Ranch located in Collin County, Texas.

One ground on which the United States District Court granted Respondents' Motion for Summary Judgment is that there is no genuine issue of any material fact to be determined by the court. The Court of Appeals did not consider this question in its Opinion which is appended to this Application for Writ of Certiorari. The question is presented to this Court and the error preserved in order to demonstrate that the basis for the District Court's holding is not that the Petitioner's allegations lack substance, but rather that the allegations made and the issues raised by those allegations have been previously determined by the Courts of the State of Nevada. Hence, this ground for the

District Court's granting of the motion should be reversed for the same reasons which will be hereafter set forth as the reasons requiring reversal of the judgment of the District Court and the Court of Appeals.

It is apparent from a reading of the pleadings that the Petitioner's allegations were substantial. She alleged, among other things, that she and her then husband, Respondent Louis Allis, Jr., were residents of Texas at the time the Rolling Hills Ranch was purchased; that the Rolling Hills Ranch was their homestead at the time her husband purportedly conveyed it to Respondent Western Farms, Ltd.; and that the deed from Louis Allis, Jr. to Western Farms, Ltd. was void as an attempted conveyance of homestead without the joinder of the wife and was calculated to defraud the Petitioner of her community interest in the Rolling Hills Ranch (R. 4-13) These allegations were substantiated by the Petitioner in her answers to interrogatories propounded by the Respondents. (R. 93-100)

Furthermore the Respondents' motions for summary judgment and the supporting exhibits and briefs urge the court to grant the motion because the matters alleged in the Petioner's petition had previously been litigated in Nevada. There is no mention made in the motion, the exhibits, or the briefs filed by the Respondents to indicate that the motion should be granted because the allegations themselves lacked merit.

For these reasons, we urge that the Court reverse the judgments of the District Court and the Court of Appeals because, as hereafter set forth, Petitioner Lauril M. Allis is entitled to have a Texas court determine her rights to the Rollings Hills Ranch.

2. The holding by the United States Court of Appeals for the Fifth Circuit that Texas Courts would give effect to a Nevada judgment determining that real property located in Collin County, Texas is the separate property of Respondent Louis Allis, Jr. is a decision of an important question of local law in conflict with applicable local decisions.

The issued decided by the Fifth Circuit is whether the Petitioner may litigate in Texas courts questions of fact and issues of law previously passed on by the courts of the State of Nevada when those questions of fact and issues of law determine title to Texas realty. The United States District Court for the Eastern District of Texas held that the Petitioner was estopped to litigate these questions in Texas. The District also held that the judgment of the Nevada courts was *res judicata* of the claims alleged in Petitioner's suit filed in Texas and was, therefore, entitled to full faith and credit. The Court of Appeals did not consider whether the Petitioner was estopped, nor did it determine whether the Nevada judgment was *res judicata* of the claims made by the Petitioner in her Texas suit. Instead, it affirmed the judgment

on the grounds that the Nevada court had jurisdiction to pass on issues affecting title to Texas realty and that, therefore, as a matter of comity, the Texas courts would give binding effect to the Nevada judgment. In so holding, the Court of Appeals erroneously applied Texas law and for this reason, the judgment of the Court of Appeals must be reversed and remanded.

The findings and conclusions of the Nevada trial court directly determined the status of the title of the Rolling Hills Ranch and insofar as it did so, the judgment of the Nevada court was void for want of jurisdiction. *McIlreath v. McIlreath*, 345 S.W. 2d 722 (Tex. Sup. Ct., 1961) This basic want of jurisdiction is pointed up by the fact that the record owner of the ranch, Respondent Western Farms, Ltd., was not a party to the divorce action filed by Respondent Louis Allis, Jr., against Petitioner Lauril M. Allis. The Nevada court therefore could not have ordered a conveyance of the property to Petitioner even if it had concluded that she was entitled to it.

The Court of Appeals incorrectly reasons that because the Nevada court could have ordered the Petitioner to execute a release to the Texas property, which order, acting *in personam*, would have been binding on her and on a Texas court, the same courts would look upon the Nevada decree as a valid adjudication of title to Texas realty. The fallacy in this argument is that the Court of Appeals has equated

the imposition of a personal obligation to the legal validity of the judgment rendered in Nevada. The question here is not whether Lauril Allis could be compelled to execute a release to the Texas property; she could be. The question here is whether Texas courts would give effect to the Nevada judgment if it were presented as evidence of ownership of the property. This, in fact, is exactly what happened here. Petitioner brought suit to recover a claimed community interest in the Rolling Hills Ranch. The Respondents presented the Nevada judgment as proof that Petitioner had no claim to the ranch. The *McIlreath* case, far from supporting the Court of Appeals' conclusion, states that under such circumstances a foreign judgment would not be given binding effect:

> "We may say, however, that a portion of the decree is *inoperative* in this State when it purports to act in rem so as to directly affect the title to Texas lands." *McIlreath v. McIlreath*, supra, at p. 744 (Emphasis the Court's)

The courts of Nevada do not have jurisdiction to award title and the Nevada court's finding and conclusions are "inoperative" and could not and do not establish or vest title to the Rolling Hills Ranch in one party or the other.

The other reason advanced by the Court of Appeals is that the courts of Texas will, as a matter of comity, give binding effect to a Nevada judgment. We should like to point out that the second portion of the opinion is premised on its

conclusion that the Nevada court had jurisdiction of the subject matter. Hence, if this Court be of the opinion that the Nevada judgment is void for want of jurisdiction it need not inquire into the policy arguments advanced. It is obviously not policy of the courts of Texas to give effect to void judgments which adjudicate title to Texas realty.

We submit that it is not the policy of the courts of Texas to give binding effect to a decree of the nature of that entered by the Nevada court. In *Holt v. Guerguin*, 163 S.W. 10 (Tex. Sup. Court, 1914), for example, the Texas Supreme Court stated that the courts of one state cannot pass on the validity of a deed to property not located within the state. That, of course, is precisely what the Nevada court did here, for it specifically found that the conveyance of the Rolling Hills Ranch from Louis Allis, Jr. to Western Farms, Ltd. was valid.

This Court has also held that the courts of one state may not pass on the validity of conveyances of property located in another state:

> "The real estate was situated in Tennessee and governed by the law of its *situs*, and while by means of its power over the person of a party a court of equity may in a proper case compel him to act in relation to property not within its jurisdiction, its decree does not operate directly upon the property nor affect the title, but is made effectual through the coercion of the defendand, as, for instance, by directing a deed to be executed or canceled by or on behalf of the party. The court

'has no inherent power, by the mere force of its decree, to annul a deed, or to establish a title.' *Hart v. Sansom*, 110 U.S. 151, 155."

* * * * *

"To declare the deed to Mrs. Strange null and void, in virtue alone of the decree in New York, would be to attribute to that decree the force and effect of a judgment *in rem* by a court having no jurisdiction over the *res*." *Carpenter v. Strange*, 141 U.S. 87 (1891) at pp. 105, 106.

In *Carmichael, et al v. Delta Drilling Co.*, 243 S.W. 2d 458 (Tex. Civ. App., 1951) *err. ref.*, a Texas court again had the opportunity to set forth judicial policy with respect to the adjudication of title to property located in a state other than Texas. In this case, the court stated that it would not consider and decide a case which would have the effect of adjudicating title to property located in another state. The facts were that the plaintiffs had brought suit for ¼th of the value of oil sold under a lease on Indiana oil property, and for an order requiring the defendant to execute an assignment to them of a ¼th interest in the oil lease. The basis for the suit was an alleged oral agreement between the parties whereunder the plaintiffs agreed to develop and operate the oil lease located in the State of Indiana in return for a ¼th interest. The plaintiffs expressly disclaimed a ¼th interest in the oil lease itself, claiming only the right to an assignment of ¼th of the oil sold under the lease. The court held that it was without jurisdiction to consider the suit because the plaintiffs were in effect claiming equitable title to ¼th of the oil lease and were actually asking

the court to inquire into the title to the property. Since the property was located in the State of Indiana, the Court held that it had no power to adjudicate the claim since it would be in effect an adjudication of title to land located in a state other than Texas. Applying this case to the situation at bar we think it clear that a Texas court would view the award of the stock by the Nevada court as being in effect an adjudication of title to real property located in Texas. We believe, therefore, that the courts of the State of Texas would not treat the Nevada court's decision as binding and would entertain Petitioner's suit for a declaration of her rights in the Rolling Hills Ranch.

The Court of Appeals, however, reads *McIlreath v. McIlreath, supra*, as indicative of a state policy which would give binding effect to the Nevada judgment. But, the *McIlreath* opinion limits itself to a consideration of whether the court of Texas will refuse to recognize an Oklahoma judgment of divorce dissolving the matrimonial bonds between Oklahoma residents and disposing of the property rights of the parties to the Oklahoma proceeding. In *McIlreath*, the Texas Supreme Court did enforce an Oklahoma decree as a matter of comity, but it was careful to state this limitation on its holding:

> "As a corollary to this holding and as applicable to this case, we hold that the enforcement of an equitable decree entered by a sister state in a divorce case between *nonresidents* of the State Texas *who possess no peculiar property rights growing out of Texas marital laws*, does not violate the public policy of this state. Other factual situations are not before us and hence are not decided." *McIlreath v. McIlreath, supra*, at p. 733. (Emphasis added)

In another portion of its opinion, the court makes this statement:

> "Or to be specific and to the point insofar as this case is concerned, what difference does it make to the State of Texas whether the property here involved is awarded to the ex-husband, or the ex-wife of a broken Oklahoma marriage?" *McIlreath v. McIlreath, supra, at p.* 728

In still another portion of the opinion, the court observed as follows:

> "Quite obviously one authority must settle these [matrimonial property] rights if anything approaching fairness and equity is to be secured. Jurisdiction for such purpose rests with the courts of the matrimonial domicile which, in this case, is the State of Oklahoma." *McIlreath v. McIlreath, supra,* at p. 724.

In short, *McIlreath* was premised upon the indifference of Texas courts to the property rights of non-residents. Is this a sound basis for assuming judicial indifference when a resident of the state is involved?

Are we to assume that it is the policy of Texas courts to refer Texas land title problems to Nevada when, upon the dissolution of a marriage one of the parties seeks to remove himself from the jurisdiction of the state wherein he resided so that he may have his rights adjudicated in a forum that may be unfamiliar with Texas law and policy? As the Court of Appeals opinion indicates, Petitioner and Respondent Louis Allis, Jr. were Texas residents for most of the time that they were married to each other.

The court, in *McIlreath*, emphasized that the parties there possessed "no peculiar property rights growing out of Texas

marital laws". This is not the case in the instant suit as a reading of the Petitioner's petition and answers to Interrogatories will demonstrate. In the petition and answers, the Petitioner alleged that the Rolling Hills Ranch was acquired by her and her then husband, Louis Allis, Jr., when they were residents of the State of Texas. This question of residency is one that can be determined only by the courts of the domiciliary state, *Calkins v. Calkins*, 115 So. 866 (Alabama Sup. Ct., 1928); *Tilt v. Kelsey*, 207 U.S. 43, 52 L. Ed. 95 (1907). The Petitioner also alleged that the Rolling Hills Ranch was the community property of her and Louis Allis, Jr. Finally, and in the alternative, the Petitioner alleged that the Rolling Hills Ranch was the homestead of Petitioner and Respondent Louis Allis, Jr. at the time it was conveyed to Respondent Western Farms, Ltd. and that the deed of conveyance was void because she did not join in the conveyance as required by the laws of the State of Texas.

Petitioner does indeed claim to possess property rights growing out of Texas marital and homestead laws, and we therefore think it must be concluded that the courts of the State of Texas would permit the instant suit to be heard on the merits. We know of no instance where Texas courts have ever approved of the courts of a sister state determining with finality the homestead rights of a Texas resident.

The judgment of the Court of Appeals should be reversed and remanded because it violates long-standing principles that a court must have jurisdiction of the *res* in order to

determine title to that *res;* permits a plaintiff in a divorce action to select a forum unfamiliar with the legal principles which will control the disposition of property acquired by the parties while married; and will allow any husband wanting to divorce his wife to move to the State of Nevada, transfer realty to a dummy corporation in consideration for its stock, file suit for divorce and force his wife to attempt to establish her rights in a jurisdiction where witnesses may not be compelled to attend, and where her attorneys and the court will not be schooled in the subtleties and intricacies of the Texas community property law.

In this case, the husband sought to avoid litigating title to the Rolling Hills Ranch in Texas by conveying that property to a Nevada corporation and claiming before the Nevada court that the property was his separate property and not the community property of himself and Petitioner. The court so held and awarded the stock to the husband and thereby vested in him full right to own, control, and dispose of the Rolling Hills Ranch through the corporation established by him and of which he was the sole shareholder. In effect, the award of the stock to the husband was the award of the Rolling Hills Ranch because the Nevada court concluded that the husband was entitled to the stock only *after* it concluded that the Rolling Hills Ranch was the separate property of the husband and not the community property of the husband and the wife. To affirm this judg-

ment would be to permit a court to do by indirection what it has long been held could not be accomplished directly, and is tantamount to saying that Texas Courts have neither control nor concern over the ownership of its real estate upon the dissolution of a marriage of parties both of whom were residents of the state until their separation. This is not the judicial policy of the state of Texas and the Court of Appeals was in error in stating that it was.

3. The Nevada judgment would not be entitled to full faith and credit in the Courts of the State of Texas.

The Court of Appeals for the Fifth Circuit did not get to the question of whether the Nevada judgment must be given full faith and credit by the courts in the State of Texas. Local considerations notwithstanding, the Constitution might require that the Nevada judgment be given effect. We submit that the controlling decision in this area is *Fall v. Eastin*, 215 U.S. 1 (1909). In that case, this Court held that a state court has no jurisdiction over realty located in another state and that any decree purporting to have an *in rem* effect on such foreign realty is void, thus relieving the situs state of any obligation to recognize that judgment under principles of full faith and credit. As stated above, Respondents did seek to have the United States District Court and the Court of Appeals give an effect *in rem* to the Nevada judgment. It is therefore not entitled to full faith and credit. U. S. Constitution, Art. IV, § 1.

WHEREFORE, Petitioner prays that a Writ of Certiorari be issued for review of the judgment of the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

CLARK, WEST, KELLER, CLARK & GINSBERG,

By Allen Butler
Allen Butler
Attorneys for Petitioner.

2424 First National Bank Building,
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September, 1967

CERTIFICATE OF SERVICE

I certify that on this 20 day of September 1967 I served the foregoing application on Mr. Robert L. Blumenthal, 1700 Mercantile Bank Building, Dallas, Texas 75202 by depositing a copy thereof in the United States mail with proper postage affixed.

Allen Butler
Allen Butler